

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 468 005
Issued to: Gene Laski

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2218

Gene Laski

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 6 April 1979, an Administrative Law Judge of the United States Coast Guard at Norfolk, Virginia, admonished Appellant upon finding him guilty of negligence. The specification found proved alleged that while serving as Master on board SS TRANSINDIANA under authority of the license above captioned, on 11 October 1978, Appellant wrongfully failed to navigate with due caution as the burdened vessel by failing to keep out of the way of SS ROBERT E. LEE in a crossing situation, in violation of Rules 15 and 16 of the International Rules of the Road.

The hearing was held at Norfolk, Virginia, on 6 February 1979.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence three exhibits and the testimony of one witness.

In defense, Appellant offered in evidence two exhibits and his own testimony.

After the hearing, the Administrative Law Judges rendered a written decision in which he concluded that the charge and specification had been proved. He then entered an order admonishing Appellant for wrongfully failing to navigate the vessel SS TRANSINDIANA with due caution, while serving as Master, on 11 October 1978, contributing to a collision with SS ROBERT E. LEE.

The entire decision was served on 22 May 1979. Appeal was timely filed on 13 June 1979 and perfected on 12 November 1979.

FINDINGS OF FACT

On 11 October 1978, Appellant was serving as Master on board

SS TRANSINDIANA and acting under authority of his license while the vessel was at sea in the vicinity of Chesapeake Bay Entrance Junction Lighted Horn Buoy "CBJ."

TRANSINDIANA, O.N. 513502, is a 611.4 foot container ship. SS ROBERT E. LEE, O.N. 557033, is an 811.7 foot freighter.

On the evening in question, TRANSINDIANA was outbound from Chesapeake Bay for a call in New Jersey. LEE was inbound Baltimore, approaching Chesapeake Bay Entrance Junction Lighted Horn Buoy "CBJ" from the southeast via an established traffic lane. The weather was clear, with seas calm and visibility good. Vessel lights and hulls could be seen.

A precautionary zone, two miles in radius, has been established off Chesapeake Bay centered on the CBJ buoy, due to the convergence of four traffic lanes. The allied traffic separation schemes, each defined by fairway buoys, are intended to separate the track lines of inbound and outbound vessels to promote safety. Vessels navigating this area customarily communicate via VHF radiotelephone to agree on how they will pass one another. Pilot vessels for Virginia and Maryland are generally on station in the western sector of the precautionary area. International Rules of the Road apply throughout the precautionary area.

At 1930 on the date concerned, TRANSINDIANA, after having discharged a Virginia pilot, shaped her course of 100 degrees true to head up for CBJ and an intended exit of the area via the northeast sea lane. At 1935, LEE was inbound in the southeast sea lane, heading 313 degrees true at 14 knots. TRANSINDIANA was visible to LEE's bridge watch as she started moving from left to right across LEE's heading. TRANSINDIANA was proceeding at 8 knots. A radar plot on LEE indicated a collision was likely if both vessels maintained course and speed. At the same time, TRANSINDIANA was showing her starboard running light and wide-open range lights to LEE.

At all material times TRANSINDIANA was guarding VHF Channels 13 and 16 on the bridge. At 1939, Appellant attempted to radio LEE via Channel 13 to advise of his intended course and request information as to LEE's intentions. When the radar plot evidenced likelihood of collision, at about 1942, LEE attempted to raise TRANSINDIANA on Channel 16 but was unsuccessful. LEE was overheard by a Coast Guard vessel calling TRANSINDIANA several times in the 2.5 minutes prior to collision. TRANSINDIANA made several attempts to contact LEE on Channel 13 just before collision. At 1944 Appellant sounded two shorts blasts, ordered full left rudder and moments later sounded two more short blasts followed by the danger signal twice. Subsequently he rang up a full astern bell and sounded three short blasts. LEE responded to the second

two-whistle signal by sounding the danger signal, and took evasive action. At 1946 the vessels were in collision, the bow of TRANSINDIANA contracting the port side of LEE.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that a situation of special circumstances arose as a result of radio communications between the vessels, requiring both to navigate with caution. Based on this first assertion, and necessarily subordinate to it, is the contention that Appellant properly navigated his vessel under the circumstances.

APPEARANCE: Carter T. Gunn, Esq. of Vandeventer, Black, Meredith & Martin, Norfolk, Virginia.

OPINION

As noted so aptly by the Administrative Law Judge, the nub of this case is whether some agreement between the vessels removed the customary crossing rules as the governing standard to direct the conduct of these vessels on the night of 11 October 1978.

The crossing rules, found in the International Rules of the Road Nos. 15 and 16, would hold TRANSINDIANA burdened to avoid LEE in the situation which developed the evening of the collision. Risk of collision existed as witnessed by the radar plot on LEE. LEE was clearly on TRANSINDIANA's starboard side. Equally clear is the fact that TRANSINDIANA made no effort to clear astern of LEE.

Initially it should be understood that the evidence, on the whole, does not substantiate that Appellant communicated with LEE regarding a crossing contrary to the rules. Although he may have been certain that LEE responded with a statement of intent, other evidence tends to indicate that LEE was unaware of the TRANSINDIANA's identity or intent until moments before the collision. It is uncontradicted that LEE attempted to raise TRANSINDIANA by radio when the risk of collision was perceived - yet this came at a time when LEE would have known a turn to the left eliminate all risk-if such a turn was indeed arranged by prior communication. Instead LEE acted in all instances as a vessel privileged under the rules, and obligated to stand-on. Marshalling all the available evidence, it is manifest that the limited evidence of a bit of radio conversation supports the theory of an express agreement to depart from the rules, while all objective evidence, otherwise available, supports the conclusion that LEE entered no such agreement. To depart from the rules an express agreement is necessary. GRIFFIN ON COLLISION, Section 47, at 119-

20, and cases cited therein.

Assuming, arguendo, that LEE made a transmission concerning an intent to turn left at some undisclosed time, it is inherently to construct an express agreement from such meagre fare. No contemporaneous intent is evidenced by such a statement; neither does it evidence any recognition that some future course of conduct is mandated by the fact the communication took place. An agreement contemplates two vessels being apprised of the intent of the other and knowingly forging an agreement on how each vessel will navigate until clear of any risk of collision. This did not occur in the instant case. These vessels were engaged in ordinary navigation, subject to no special circumstances. See Griffin, Section 228, at 516. Any departure from the crossing rules must be justified by the party alleging special circumstances, and Appellant has not met that burden here. The Maggie J. Smith, 123 U.S. 349 (1887). The Administrative Law Judge based his conclusion that no agreement existed on substantial and reliable evidence of a probative character and I find his conclusion supportable in law and the facts of this case.

Absent such an agreement, the crossing rules apply with full vigor, and Appellant wrongfully failed to stand clear of LEE, when TRANSINDIANA was charged with that duty by the applicable Rules of the Road.

CONCLUSION

The Appellant wrongfully failed to navigate his vessel in the manner appropriate to the crossing situation with which he was faced by failing to keep out of the way of SS ROBERT E. LEE in a crossing situation in which LEE was privileged, thereby violating the International Rules of the Road.

ORDER

The order of the Administrative Law Judge dated at Norfolk, Virginia, on 6 April 1979, is AFFIRMED.

R. H. SCARBOROUGH
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 4th day of June 1980.

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